
(1964) 02 MAD CK 0039
In the Madras High Court
Case No : Writ Petition No. 140 of 1964

S.K. Ramoorthy Iyer

APPELLANT

Vs

The Chief Electoral Officer, Madras and another

RESPONDENT

Date of Decision : 14-02-1964

Acts Referred:

Representation of the People Act, 1950 — Section 23

Citation : (1964) 02 MAD CK 0039

Hon'ble Judges : Veeraswami, J

Bench : Single Bench

Advocate : S.K. Ahamed Meeran, for the Appellant;

Final Decision : Dismissed

Judgement

Veeraswami, J.—The petitioner is a rate payer of the Municipal Council at Ootacamund, and is a resident of Ward No. 6. He complains that his name was included in the Municipal electoral roll by the Returning Officer of the Municipality too late for his name to be proposed for nomination, and that on that account his valuable right to stand for the election has been affected. He, therefore, prays for a rule directing the Chief Electoral Officer, Madras, as well as the Returning Officer, who is the Commissioner of the Ootacamund Municipality, to forbear from holding the election for Ward No. 6 on 17th February, 1964, and to hold the same on some other date after giving an opportunity to the petitioner to file his nomination paper for the election. According to the petitioner, the Chief Electoral Officer notified on or about 28th December, 1963, that the election to the Municipal Council, would take place on 17th February, 1964. The preliminary list of amendments to the Assembly rolls was published on 16th August, 1963, and claims and objections were invited on or before 16th September, 1963. The final list of amendments was published on 16th December, 1963. It does not appear that the petitioner took any steps to have his name included in the Assembly roll. On the basis of the Assembly electoral roll the second respondent published the list as required under S. 44 (1) of the Madras District Municipalities Act, (Act V of

1920) on 6th January, 1964. The next day the petitioner applied under S. 23 of the Representation of the People Act for inclusion of his name in the Assembly electoral roll. On that the Electoral Registration Officer concerned called for objections on or before 14th January, 1964. There being no objections received, he included his name apparently on 17th January, 1964. The order including his name in the Assembly electoral roll was received by the second respondent at about 4.30 p.m. on the same day, and he as required by Sub-S. (2) of S. 44 of the Madras District Municipalities Act, published it at about 8 p.m. the same day. The time fixed for receipt of nominations was 5 p.m. on 17th January, 1964. In the circumstances, therefore, the petitioner could not be nominated as a candidate for Ward No. 6.

2. The argument for the petitioners is that having regard to the purpose of the inclusion of his name in the Assembly electoral rolls on his application under S. 23, of the Representating of the People Act, his name should have been included in the Municipal electoral roll and the same published in time to enable his nominations to be filed, and that this having not been done, his right of franchise has been infringed and that therefore the election to Ward No. 6, should be postponed so as to give him an opportunity for his nomination.

3. In order to appreciate the contention it is necessary to refer to the relevant statutory provisions. S. 44(1) of the Madras District Municipalities Act provides for qualifications for inclusion in the electoral roll for municipality and publication thereof. In effect this provision directs that it is only a person whose name is included in the electoral roll for any Assembly constituency as relates to any Municipality, that shall be entitled to be included in the electoral roll for the Municipality prepared for the purpose of that Act and that no other person shall be entitled to be included in such roll. It is therefore a first requisite for a person to be in the electoral roll for the Municipality that his name should find a place in the electoral roll for the Assembly constituency relating to the Municipality. The procedure for the preparation of the municipal electoral roll is prescribed by Sub-S. (2) of S. 44. That sub-section reads:

As soon as may be, after the electoral roll for the Assembly Constituencies which consist of, or comprise, the Municipality or any portion thereof, have been published, revised or amended in pursuance of the Representation of the People Act, 1950, any person authorised by the election authorities in this behalf shall publish in such manner as the State Government may direct, the portions of such rolls which relate to the Municipality or of the alterations therein, as the electoral roll for the Municipality or as alterations to such roll, as the case may be.

4. In effect this provision requires that the person authorised by the election authorities should publish in the manner prescribed by the State Government the Municipal electoral roll, as soon as may be, after the electoral roll for the Assembly is published, revised or amended under the Representation of the People Act, 1950. Sub-S. 4(A) has been introduced by Madras Act X of 1962, which serves more or less as a proviso to Sub-S. (2) and says that no alteration

should be made in any part of the electoral roll for the Municipality published under Sub-S. (2) as revised by any alterations thereto subsequently published under that sub section or under Sub-S. (4), after the last date fixed for making nomination of candidates for election to a ward and before the result of the election for the ward is notified. In other words, but for Sub-S. 4 (A) the officer authorised by the election authorities would always be under an obligation to alter the municipal roll after and as and when the electoral roll for the Assembly is published, revised or amended. By virtue of Sub-S. 4(A) this obligation is qualified and no alteration to the municipal electoral roll can be made between the last date fixed for making nomination of candidates for election to a ward and before the result of the election for the ward is notified. S. 45 empowers the election authority, notwithstanding anything contained in S. 44, to publish after making such enquiry as he thinks fit in such manner as the State Government may direct, amendments to the electoral roll for any Municipality for the purpose of bringing it into accord with the electoral roll for the relevant Assembly constituency.

5. Sri Ahmed Meeran argues that having regard to these statutory provisions and the purpose for which the municipal electoral roll is to be revised, it was incumbent upon the second respondent to have included his name in the municipal electoral roll and published it as soon as he was informed of the inclusion of his name in the Assembly electoral roll and that, if this had been done, he could have filed his nomination papers. The whole argument of Mr. Ahmed Meeran is rested on the purpose for which the petitioner himself sought for under S. 23 of the Representation of the People Act to have his name included in the Assembly electoral roll and then in the municipal electoral roll. But S. 44 is not related to any particular municipal election. Its provisions are general and their purpose is merely to bring the municipal electoral roll upto date from time to time in order to make it accord with the Assembly electoral roll. Further Sub-S. (2) of S. 44 does not require that the person authorised by the election authority should include in and publish the Municipal electoral roll immediately after the electoral roll of the Assembly constituency is published, revised or amended. On the other hand, the opening words of Sub-S. (2) of S. 44, namely "as soon as may be" clearly indicate that all that is required of the person authorised by the election authority is that he should publish the name in the municipal electoral roll with all possible and reasonable despatch.

6. In this case, the records show that the second respondent heard of the inclusion of the petitioner's name in the Assembly electoral roll only at about 4-30 p.m. on 17th January, 1964 and he published it at or about 8 p.m. the same day. In my opinion this clearly was within the phraseology "as soon as may be".

7. Mr. Ahmed Meeran invited my attention to Chief Commissioner, Ajmer Vs. Radhey Shyam Dani, as supporting his contention that in circumstances like this it was incumbent upon the second respondent to have included his name and

published the municipal electoral roll before the time fixed for nomination. The facts and circumstances in that decision are entirely different from those, which this Court is called upon to decide here. It is not the case of the petitioner, unlike in the case before the Supreme Court, that he was not given an opportunity to include his name in the Assembly electoral roll and objections were not heard and the matter decided.

8. In the absence of a statutory provision compelling the second respondent to have included his name in the municipal electoral roll and published the same immediately on receipt of the information of the inclusion of the petitioner's name in the electoral roll for the Assembly and in view of the opening words, which I have referred in Sub-S. (2) of S. 44, I am unable to hold that the petitioner has any cause to complain. "As soon as may be" in Sub-S. (2) of S. 44 cannot be interpreted to mean "forthwith" [vide Keshav Nilkanth Joglekar Vs. The Commissioner of Police, Greater Bombay, . In fact, if he had been more diligent, he could have had his name included before the Assembly electoral roll was published on 16th December, 1963. Quite apart from that, as the statutory provisions stand at the moment, it cannot be said that the publication by the second respondent of his name in the municipal electoral at or about 8 p.m. on 17th January, 1964, in any way violated or infringed his right, if any. On that view the petition is dismissed with costs. Counsel's fee Rs. 100.